

## **Examples of Complex Business Litigation Matters**

***ABA 2000, ABA Founders LLC, ABA Operations LLC v. Mizlou Television Network, Inc. (C.D. Cal.).*** Zelle Hofmann attorneys represent the professional basketball organization in a suit filed against an alleged independent television network for breach of contract and intentional interference with prospective business relationships. The case includes allegations that Mizlou Television Network interfered with the ABA plaintiffs' negotiations for the national television broadcast of their playoff games.

***Weyerhaeuser Co. v. Thermogas Co., 620 N.W.2d 819 (Iowa 2000).*** Zelle Hofmann attorneys represented Weyerhaeuser Co. in this action for negligence, strict liability, breach of contract and breach of express and implied warranties based upon allegation that a liquid petroleum fuel tank exploded prematurely. Weyerhaeuser asserted that the tank was defective, and that were it not defective, the tank would have withstood a fire at its facility for the three minutes it took the fire fighters to arrive on scene. Over Weyerhaeuser's objection, the trial court permitted the jury to consider Weyerhaeuser's comparative fault, and the jury found Weyerhaeuser 70% at fault for the damages it suffered. On appeal, the Iowa Supreme Court reversed, agreeing with Weyerhaeuser that the district court erred in (1) directing a verdict for the tank distributor on Weyerhaeuser's claims of strict liability and breach of implied warranty of merchantability, (2) refusing to instruct the jury that the cause of the fire was legally irrelevant with respect to the negligence of Weyerhaeuser, and (3) refusing to give the jury a res ipsa loquitur instruction on Weyerhaeuser's negligence claim against the tank distributor.

***Business tort, breach of contract, unfair competition action (N.D.Cal., Cal. Super. Ct., San Francisco Cty., Cal. Super Ct., Contra Costa Cty.).*** Zelle Hofmann attorneys represent a corporate client in a number of cases involving claims for breach of fiduciary duties, fraud, fraudulent concealment, breach of contract, malicious prosecution, interference with prospective economic advantage, unfair competition and conspiracy to breach fiduciary duties. They are also defending the same client against claims by the defendant and other parties, which include allegations of unfair competition, private nuisance, interference with prospective economic advantage and business relations, and wrongful termination of employment.

***Breach of contract, licensing agreement (N.D.Cal.).*** Zelle Hofmann attorneys represent a Silicon Valley company in a contractual dispute arising out of certain licensing agreements.

***Business tort and other claims arising out of sale of business (N.D.Cal. and American Arbitration Association, San Francisco, California).*** Zelle Hofmann attorneys represented a party in an arbitration proceeding and in a federal court proceeding involving disputes surrounding the sale of part of a business. The case includes allegations of fraud, negligent misrepresentation, breach of fiduciary duty and securities violations.

***Chrysler Corporation v. Iacocca (Mich. Cir. Ct., Oakland Cty.); Iacocca v. Chrysler Corporation (Cal. Super. Ct., Los Angeles, Cty.).*** Zelle Hofmann attorneys represented Chrysler Corporation in disputes concerning Lee Iacocca's alliance with Kirk Kerkorian in alleged corporate control matters, as they related to litigation concerning Mr. Iacocca's Chrysler stock options. Shortly after Zelle Hofmann attorneys succeeded in obtaining the dismissal of Mr. Iacocca's California action against Chrysler, the matter was settled.

***Business tort, breach of contract, unfair competition action (Cal. Super. Ct., San Francisco Cty.).*** Zelle Hofmann attorneys represented a plaintiff food company in a complex action for breach of contract, fraud, negligence and interference with business relations. The plaintiff alleged that various defendants failed to promote its food products as required by certain contractual, fiduciary and other obligations, and that they interfered with ongoing and prospective business relationships of the plaintiff. The matter settled prior to trial.

***Breach of contract – arbitration action (American Arbitration Association, Dallas, Texas).*** Zelle Hofmann attorneys represented a party in a binding arbitration before a single arbitrator of the American Arbitration Association. This arbitration arose out of the sale of the stock of a company by our client and others to another company. The latter company sought to recover a portion of an escrow fund that was created pursuant to the stock purchase agreement.

***Fiduciary duty claims (U.S. Bankr. E.D.N.Y.).*** Zelle Hofmann attorneys represented a former chief executive officer and directors of a company in this action against them for, among other claims, breach of fiduciary duty in connection with a leveraged buy-out.

***Breach of contract, noncompetition clause action (M.D.Tenn.).*** Zelle Hofmann attorneys represented a manufacturer of sewing machines in a suit involving contractual disputes arising out of its purchase of defendant's business. A preliminary injunction was obtained concerning the parties' non-competition clauses. The case settled.

***Trade secret theft, trade disparagement action (Ill. Cir. Ct., Cook Cty, N.D.Ill., 7<sup>th</sup> Cir., C.D.Cal.).*** Zelle Hofmann attorneys represented one of the top financial printers in various litigation involving competitors in the same business category. The disputes concerned allegations of stealing trade secrets and employees, as well as trade disparagement and other violations. Settlements were reached in all cases.

***ERISA litigation (C.D.Cal. and 9<sup>th</sup> Cir.).*** This case involving issues of ERISA law, concerned the leveraged buyout of a corporation by a company ESOP and whether the persons who approved that transaction (which involved a consolidation of existing profit sharing plans) violated their fiduciary duties under ERISA.

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## Construction Litigation

Zelle Hofmann has been involved in more than 1,000 construction-related disputes including an exhaustive array of origins and legal issues, such as roof failure, fire, manufacturing plant explosions, building collapse, turbine and compressor failures, claims of construction defect, cost overruns, breach of contract, engineer negligence, bid-rigging, government contracts, etc. Zelle Hofmann has handled construction disputes in federal and state jurisdictions throughout the U.S. and abroad.

### Representative Matters

**9/11 World Trade Center.** Myriad of construction issues in determination of multi-billion dollar replacement costs.

**9/11 Deutsche Bank.** Total loss versus repair; time line for repairs; environmental remediation issues (involving asbestos and other contaminants, and concerning acceptable cleanup levels, *risk* analysis, etc.); issues pertaining to the integrity of existing building foundations.

**American National Power.** Construction defect case involving highly flammable cooling pads for use in a filter house that protected a gas turbine.

**Adco Group et al. v. Travelers et al.** (complex action involving the coordination of multiple lawsuits with over 25 parties, claims of \$250 million in construction defects and damage at a luxury resort in Southern California, and involving issues regarding the extent of construction defects, their cause, damage allegedly resulting from the defects and its manifestation, as well as the calculation of the reasonable cost of repairing the property)

**USF&G and AHAC v. Braspetro Oil Services Company and Petroleo Brasileiro S.A. - Petrobras, et al, (S.D.N.Y. 2002).** Multi-national, multi-hundred million dollar performance bond, construction, and indemnity dispute involving construction of offshore deep-water oil platforms.

**Columbus Municipal Airport Authority.** Multi-party latent construction defects dispute.

**Nicholson v. Turner/Cargile, 107 Ohio App. 3d 797, 669 N.E.2d 529 (Ohio App. 1995).** Alleged negligence of consulting engineer resulting in deaths of construction workers.

**C.J. Mahan Construction Co. v. JMG Maintenance, Inc. and Kokosing Construction Co., Case No. 93CVC04-2925 (Franklin Cty. Ohio C.P. 1994).**

## Construction Litigation

Breach of contract and fraud dispute arising from construction of vegetable oil processing plant.

**Bridgestone Firestone.** Dispute over cost to construct latex, hard rubber, and shipping container facilities in Liberia.

**City of Hamilton, Ohio.** Disputes relating to the construction and renovation of city hydroelectric facility and wastewater treatment plant.

**Ethanol Plant Explosion.** Dispute between plant owner and design-build contractor concerning propriety of new ethanol manufacturing technology and its connection to a major explosion leading to substantial property damage and loss of life. Required detailed cause and origin engineering analysis and testing.

**Ethanol Plant Explosion (another).** Explosion of boiler in new ethanol distillation line under construction. Required engineering analysis, detailed understanding of the contractual rights and obligations of the parties, as well as the scope of available remedies for losses occurring during construction.

**Dallas Mansion Fire.** Dispute over alleged construction defects leading to destruction of \$45 million mansion.

**Roof Failure at Target Store.** Dispute over failure of membrane roof during thunderstorm allegedly due to construction defects.

**Cement Unloader Collapse at Dock Terminal.** Dispute over cause of structural collapse of a trolley mounted cement unloader.

**Warehouse Roof Collapse.** Dispute over roof collapse failure in high winds allegedly due to construction defects.

**Occidental Chemicals Turbine Failure.** Dispute over failure of large steam turbine in chemical plant allegedly due to exposure to high concentrations of caustic introduced by steam supplier.

**Equistar Compressor Failures.** Dispute over repeated failures of open faced compressor impellers allegedly due to acoustic resonance and defective welding.

**Atofina Plant Fire.** Dispute over failure of fire suppression system at chemical plant allegedly due to installation of defective components, improper testing procedures, and improper testing and inspection.

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## Construction Litigation

***Flooding of Guardian Manufacturing Facility.*** Dispute over flooding of plant building allegedly due to improper repair techniques used by general contractor and roofing contractor.

***Investigations of power plant outages in Texas and Oklahoma.*** Oversaw cause and origin studies for equipment failures and fires in generation facilities in Texas and Oklahoma.

***Bear Dredging.*** Dispute over bid changes on Mobile Bay dredging project.

***TRW.*** Protest over award of government construction project to Bechtel for nuclear waste repository.

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## Director & Officer Litigation

Zelle Hofmann handles the full spectrum of D&O and E&O disputes. Zelle Hofmann attorneys have handled claims ranging from attorney, accounting, medical, and other professionals' malpractice issues to securities broker and dealer misconduct allegations. The firm also has defended accountants, attorneys, broker dealers, financial planners, insurance agents, investment advisors, and other professionals. Zelle Hofmann has also handled a number of class actions in these areas.



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- Timothy W. Regan
- Patricia St. Peter
- John C. Steele
- Richard L. Voelbel
- Durwood J. Zaelke
- Lawrence Zelle

## **Environmental Law**

Zelle Hofmann attorneys have extensive experience in numerous areas of environmental law and environmental litigation, both domestically and internationally. We are staffed with some of the best environmental attorneys and litigators in the country, who focus on promoting clients' businesses, minimizing costs, ensuring compliance, minimizing exposure and managing risk, and, where necessary, winning the case. This knowledge and experience includes environmental enforcement and compliance under U.S., international, and other legal systems' law. Zelle Hofmann attorneys have served on leadership committees and other executive committees in international environmental organizations and in public interest environmental law firms. Specific areas of environmental expertise include litigation matters and matters involving air quality, water quality, solid and hazardous wastes, toxic chemicals, acid rain and acid mine drainage claims, groundwater contamination, underground storage tanks, corrective action and remedial action plans, contribution, agency enforcement actions, global warming, and energy conservation, among numerous other areas. Zelle Hofmann attorneys also have extensive experience in the area of environmental insurance coverage disputes.

Zelle Hofmann's managing partner in Washington D.C., Durwood Zaelke, is the Director of the International Environmental Law Program at the American University law school, and also has taught at Yale Law School, Duke Law School, and Johns Hopkins. He co-founded the Program on Governance for Sustainable Development at the University of California, Santa Barbara's Bren School of Environmental Science & Management, where he serves as a Bren Scholar and Co-Director. In 1989, Mr. Zaelke founded the Center for International Environmental Law ("CIEL"), a premier public interest international environmental firm, in Washington, D.C. and Geneva. He served as President of CIEL until 2003.

Mr. Zaelke is the author of the leading law school textbook entitled *International Environmental Law & Policy* (Foundation Press 2nd ed. 2002) (1,500 pages) (with Hunter & Salzman), which has been used in more than 115 universities around the world. In addition to a *TREATY SUPPLEMENT* (Foundation Press 2002) (380 pages), and *TEACHERS MANUAL* (350 pages), other books by Mr. Zaelke include: Van Dyke, Zaelke & Hewison, eds., *FREEDOM FOR THE SEAS: A NEW LOOK AT OCEAN GOVERNANCE* (Island Press 1993), co-winner of the Smithsonian's 1994 Sprout Award for best book on international environmental affairs; and Zaelke, Housman & Orbach, eds., *TRADE AND THE ENVIRONMENT: LAW, ECONOMICS, AND POLICY* (Island Press 1995), winner of a special award at the 1997 Buenos Aires International Book Fair for its Spanish version, entitled *COMERCIO INTERNACIONAL Y MEDIO AMBIENTE: DERECHO, ECONOMIA Y POLITICA* (Espacio Editorial, Buenos Aires, June 1995) (translation by Eugenia Bec). Other



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## Environmental Law

publications include Zaelke & Cameron, *Global Warming and Climate Change An Overview of the International Legal Process*, 5 *AM. U. J. INT'L L. & POL'Y* 249 (Winter 1990), selected as one of the best law review articles of the year and reprinted in 22 *LAND USE & ENV'T'L L. REV.* (1991); reprinted in Italian in *FUTURO SOSTENIBILE: EFFETTOSERRA* 36 (1990).

In 2003, Mr. Zaelke published *INDUSTRY GENIUS: INVENTIONS AND PEOPLE PROTECTING THE CLIMATE AND FRAGILE OZONE LAYER* (Greenleaf UK, 2003) (with Dr. Steven O. Andersen). *INDUSTRY GENIUS* presents the inventive genius behind technological breakthroughs by ten global companies, including Honda, Seko-Epson, ST Microelectronics, Trane, and Alcoa Aluminum, and suggests how forward looking companies can pursue sustainable business strategies, avoid potentially costly liabilities, and improve their relations with customers, shareholders, and suppliers.

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## Insurance Coverage

Attorneys at Zelle, Hofmann, Voelbel, Mason & Gette LLP have handled insurance cases throughout the United States and abroad. Zelle Hofmann attorneys have continuously been at the forefront of cutting edge insurance coverage litigation and have been involved in the insurance aspects of numerous catastrophes. The following is a representative listing.

- 9/11 World Trade Center Terrorist Attack
- Hurricanes Katrina, Rita, Andrew, and Iniki
- Angus Chemical Plant Explosion - Sterlington, Louisiana
- Commodore Hotel Fire and Explosion - St. Paul, Minnesota
- El Paso Natural Gas Dam Collapse - Phoenix, Arizona
- General Electric Fire - Mexico
- Hilton Hotel Fire - Las Vegas, Nevada
- Liberian Civil War - Liberia, West Africa
- Loma Prieta Earthquake - San Francisco, California
- Lone Star Steel Toxic Cloud - Morris County, Texas
- MGM Grand Hotel Fire - Las Vegas, Nevada
- Mobil Synfuels Manufacturing Plant - Australia
- Montana Rail-Link Derailment and Explosion - Helena, Montana
- Northridge Earthquake - Los Angeles, California
- Olympic Pipeline Spill/Explosion - Bellingham, Washington
- Phelps Dodge Airplane Crash - Chino, New Mexico
- Productos de Maiz Warehouse Fire - Mexico
- Reno Dust Claims Class Action - Reno, Nevada
- Subaru of New England Automobile Toxic Damage - Boston, Massachusetts
- TU Electric Stack Collapse - Monticello, Texas
- University of Colorado Power Plant Explosion - Boulder, Colorado
- Warner Lambert Manufacturing Plant Explosion - Long Island City, New Jersey

## Environmental Coverage

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- Lawrence Zelle

## Insurance Coverage

Zelle Hofmann attorneys have been at the forefront of environmental coverage disputes from the inception of CERCLA in 1980. The firm has handled hundreds of environmental coverage lawsuits in nearly every state including claims under environmental impairment liability policies as well as those under primary and excess policies. Zelle Hofmann has tried numerous cases to judgment and has served for years as national and regional environmental coverage counsel for several major companies.

Zelle Hofmann has considerable experience with environmental coverage disputes involving municipalities and has litigated many such claims under municipal liability insurance policies. Also, trade association "master policy programs," such as those utilized by the retail dry-cleaning industry, have been frequent subjects of disputes and litigation handled by the firm. In addition, Zelle Hofmann attorneys have handled numerous toxic tort bodily injury coverage cases arising out of manufacturing plant air emissions, pesticides, chemicals, groundwater contamination, tobacco products, and lead.

### Property Coverage

Zelle Hofmann represents some of the largest commercial property insurers in the world. Its experience encompasses the full range of property coverage, appraisal, and adjustment disputes, including all types of complex business interruption and extra expense claims. These disputes include losses from fires, explosions, structural failures, equipment failures, contamination, boiler and machinery accidents, electrical events, and failure of fire protection systems. The risks involved have included airports, foundries, steel mills, manufacturing plants, mining facilities, lumber mills and yards, electrical and nuclear power plants, automobile distributors, marine terminals and docks, office buildings, warehouses, retail stores, apartment buildings, hotels, livestock and agricultural buildings, gambling casinos, pipelines, construction projects, and innumerable other structures. Zelle Hofmann attorneys have counseled property insurers in the drafting of policy language, including environmental exposures and Y2K issues.

### Mold Claims

Zelle Hofmann has assisted some of the nation's largest carriers with developing coverage positions, claim handling guidelines, and expert resource databases for mold claims. Zelle Hofmann has provided counseling, coverage advice and representation in litigation for mold claims arising under commercial property, commercial liability, and homeowner insurance policies.

The following is representative of Zelle Hofmann's experience with mold claims:

## Insurance Coverage

- Commercial Building Losses - Property damage, business interruption, and lost income claims arising from mold found at professional buildings (dentists, surgeons, attorneys, etc), light industrial facilities, and high density office space.
- Apartment/Condominium Losses - Property damage and lost rent claims arising from mold in new construction and renovated buildings.
- School District Losses - Property damage claims submitted by school districts involving poor maintenance, poor repair, and improper HVAC procedures.
- Homeowner Losses - Homeowner claims for property damage and bodily injury allegedly arising from the existence of mold.
- Contractor Defense - Defense of contractors and subcontractors from bodily injury and property damage claims allegedly arising from mold caused by poor construction and/or repairs.

### Products Liability and Asbestos

Zelle Hofmann attorneys have handled a broad spectrum of product liability coverage actions, such as defective PVC plumbing pipe, cement railroad ties, and oil pipeline claims. The firm has managed bodily injury and asbestos-in-building coverage disputes under primary and excess property and liability policies as well as reinsurance contracts. Zelle Hofmann attorneys have tried and arbitrated numerous cases, conducted ADR under the Wellington Agreement, and have negotiated various settlements from interim agreements to buyouts. Issues have included trigger, scope, allocation, the number and application of deductibles, appropriate exhaustion, "other insurance" issues, specific product exclusions, late notice, failure to cooperate, misrepresentation, expected or intended, defense obligations, obligations of a captive, effect of self-insured retentions, quota share arrangements, and many others.

### Bad Faith and Extra-Contractual

One of Zelle Hofmann's core insurance practices is defending property and casualty and life and health insurers against claims alleging "bad faith," the violation of unfair claims and business practices statutes, other extra-contractual claims and punitive damages. The firm also represents clients in responding to complaints brought by insureds to state insurance regulators. Zelle Hofmann attorneys have sat on the national "bad faith" panels of several insurers for years. The firm tracks and analyzes "bad faith" and punitive damages judgments in all of the 50 states and U.S. territories and devotes a substantial amount of time counseling and training our clients' claims professionals in extra-contractual claim avoidance techniques. Zelle Hofmann has also amassed a network

## Insurance Coverage

of experts and consultants in this area to assist in defending its clients against these high exposure claims.

### Special Investigative Units

Zelle Hofmann works closely with its clients' Special Investigative Units in identifying and defending against fraudulent claims. The firm's experience in this area assists its clients in complying with various fair claims handling statutes while at the same time, protecting their shareholders' interests in not paying fraudulent claims.

### Construction

Zelle Hofmann attorneys are experienced in both construction defect and construction site injury coverage disputes. They are well versed in all of the many issues related to construction defect and injury coverage litigation arising out of CGL and E&O policies. They have been involved with the evolvement of policy language regarding the additional insured endorsements as well as the business risk exclusions. Zelle Hofmann has handled numerous allocation disputes among insurers in progressive damage actions. Zelle Hofmann attorneys are also experienced in surety matters, having advised our clients regarding their rights and obligations on construction projects. Zelle Hofmann has defended cases against its clients' insureds in construction defect matters involving all aspects of construction including condominium developments, commercial office buildings and industrial space, and residential housing.

### Employment Practices

Zelle Hofmann has handled numerous employment practices coverage disputes arising out of allegations of wrongful termination, harassment, and discrimination. Zelle Hofmann attorneys have extensive experience with these issues under standard liability policies and with employment practices liability coverages.

### Directors & Officers and Errors & Omissions

Zelle Hofmann handles the full spectrum of D&O and E&O coverage disputes and frequently acts as monitoring counsel. Zelle Hofmann attorneys have handled claims ranging from attorney, accounting, medical, and other professionals' malpractice issues to securities broker and dealer misconduct allegations and class actions alleging marketing misconduct by life insurers in the sale of life policies and variable annuities. The firm also defends its clients' insured accountants, attorneys, broker dealers, financial planners, insurance agents, investment advisors, and other professionals. Zelle Hofmann has also handled a number of class actions in these areas.

## **Insurance Coverage**

### **Liability Defense**

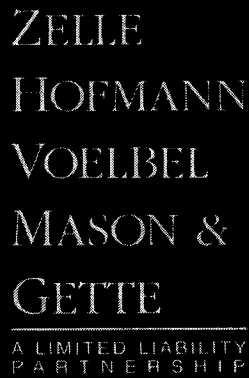
Zelle Hofmann's liability defense practice is as varied as our clients' product lines. The firm has the experience and capacity to handle the more sophisticated and complex liability matters facing our clients' insureds. Zelle Hofmann attorneys have experience in the following liability areas:

- Cemetery and mortuary liability
- Class actions
- Construction defect and construction site injury
- Equipment and machinery
- Elder care
- Inland marine
- Intellectual property
- Legal malpractice
- Medical devices
- Medical malpractice
- Motor vehicle
- Pharmaceuticals
- Premises liability
- Products liability
- Securities
- Technology
- Workplace exposure
- Wrongful termination

### **Intellectual Property**

Zelle Hofmann has been involved in many intellectual property coverage disputes. Zelle Hofmann attorneys have litigated these issues in a majority of states and federal forums. Representing its insurance company clients, the firm has tried several advertising injury coverage actions arising out of trademark and patent infringement as well as other intellectual property disputes in the computer software and other high tech industries.





## Insurance Coverage

The firm has amassed a working database of decisions, comments, and experts in the field.

### Technology and E-Commerce

Zelle Hofmann's technology and E-commerce practice area is a function of its clients offering new products to the emerging technology industry. This line of business is creating challenging coverage and liability issues. Zelle Hofmann is committed to remaining at the forefront in counseling its clients and defending their insureds in this rapidly changing world of technology. The firm is monitoring the development of law related to this industry and is accumulating a database of issues and decisions, consultants, and experts similar to what it has amassed in the construction defect, property, environmental, intellectual property, and "bad faith" areas.

### Appellate Advocacy

Zelle Hofmann attorneys have successfully litigated scores of appeals resulting in many important appellate decisions on fundamental issues of insurance law. These include the following:

- Applicability of suit limitation provisions in property policies.
- Whether the costs incurred for asbestos abatement/removal are insurable under a property policy.
- Whether an EPA letter constitutes a suit.
- Whether the sudden and accidental pollution exclusion bars claims for gradual pollution.
- Whether the owned property exclusion bars coverage for pollution.
- Whether governmental agency response costs are damages.
- Whether environmental claims are covered under personal injury coverage.
- Whether patent, copyright, and trademark claims are covered under advertising injury coverage.
- Whether late notice bars coverage.
- Whether voluntary payments are covered.
- Whether pre-tender defense costs are covered.
- Whether a transaction constitutes a merger or an acquisition in the D&O context.



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- Whether third parties may recover for "bad faith" under med pay provisions.
- The rights and responsibilities of outside consultants representing property insurance claimants.
- Defense and indemnity allocation issues between insurers.

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## Insurance Subrogation

Zelle Hofmann attorneys have successfully handled some of the largest and most complex commercial property insurance subrogation matters in the history of the industry. Our founding partners were among the pioneers of insurance subrogation in the 1970's. In the last six years, we have recovered in excess of a quarter of a billion dollars on behalf of our insurance company clients and their insureds. Through our national presence and strong local counsel network, we have successfully pursued subrogation claims throughout the United States. Zelle Hofmann currently serves as subrogation counsel for major property insurers including Factory Mutual Insurance Company, HSB Industrial Risk Insurers, Liberty Mutual, Reliance National and others.

Some notable subrogation recoveries achieved by Zelle Hofmann:

- Chemical Plant Explosion  
(\$164,500,000--100%+ recovery)
- Electric Company Stack Collapse  
(\$37,000,000)
- Fire Damage in Juarez, Mexico  
(\$10,475,000)
- Automobile Property Damage  
(\$6,725,000)
- Warehouse Fire in Mexico City  
(\$5,000,000)
- Dam Collapse  
(\$2,760,000)
- Manufacturing Facility Fire  
(\$2,000,000)
- Building Collapse  
(\$1,993,000)
- Electrical Fire  
(\$1,675,000)

These results are provided for informational purposes only and are not intended to be a predictor of future success or results in any other matter.

#### Representative Matters

9/11 Insurance Subrogation - multi-billion dollar claim against the airlines and airport

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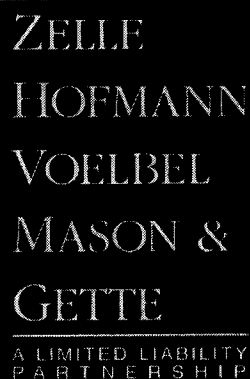
## Insurance Subrogation

security companies

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Zelle Hofmann attorneys have represented clients in numerous trademark, trade dress, trade secret, copyright and false advertising cases over the years, both throughout the U.S. and abroad. In addition to the representation of clients in many trademark and trade dress infringement and dilution actions, Zelle Hofmann attorneys have analyzed and advised clients on potential litigation under the Trademark Cyberpiracy Prevention Act, on such developing areas as trademark rights in product configurations, and on proving dilution under the Federal Trademark Dilution Act. Because of this experience, Zelle Hofmann attorneys are well-suited to efficiently pursue the discovery needed for each case, to marshal needed evidence, including favorable survey evidence, and to position the case for adjudication of a preliminary injunction motion, a summary judgment motion or trial.

***View case summaries of trademark, trade dress, trade secret and false advertising matters.***

### Patent Infringement

Zelle Hofmann's patent infringement litigation practice forms an integral part of the firm's commitment to meeting the expanding needs of its clients. Zelle Hofmann is aggressive in helping patent holders enforce their rights against infringers of all magnitudes. Our lawyers are also committed to defending our clients that are wrongfully accused of infringement or that become embroiled in declaratory judgment proceedings. Our lawyers accommodate the needs of both our individual and corporate clients by structuring a litigation plan and strategy conducive to the scope of the infringement and resources available.

Zelle Hofmann attorneys have served as lead trial counsel on patent matters of all sizes. Our attorneys also co-venture with patent licensing counsel and/or patent prosecution counsel to identify and implement a long-term patent licensing strategy.

Our attorneys realize litigation is not always the answer and strive to promote alternative solutions to complex patent infringement questions. In that vein, we provide advice regarding the best solutions to patent infringement issues, oftentimes reaching an amicable solution before beginning the litigation process. An action plan to handle patent infringement activities before the infringement occurs allows our attorneys to move quickly and decisively at the first sign of infringement.

Zelle Hofmann attorneys have represented parties in a number of patent infringement cases. Zelle Hofmann's patent litigation experience ranges from high tech - internet and electronics technology - to patents covering exercise steps, structural hardware and road

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## Intellectual Property Litigation

bumps. Our patent infringement attorneys include engineers who have hands-on experience in a variety of technical fields including onshore and offshore oil and gas production and processing, petrochemical manufacturing, software development and engineering, and computer networking systems.

### Trademark, Trade Dress, and Trade Secret Litigation

Zelle Hofmann attorneys have represented clients in numerous trademark, trade dress, trade secret, copyright and false advertising cases over the years, both throughout the U.S. and abroad. In addition to the representation of clients in many trademark and trade dress infringement and dilution actions, Zelle Hofmann attorneys have analyzed and advised clients on potential litigation under the Trademark Cyberpiracy Prevention Act, on such developing areas as trademark rights in product configurations, and on proving dilution under the Federal Trademark Dilution Act. Because of this experience, Zelle Hofmann attorneys are well-suited to efficiently pursue the discovery needed for each case, to marshal needed evidence, including favorable survey evidence, and to position the case for adjudication of a preliminary injunction motion, a summary judgment motion or trial.

### Licensing Cases

Zelle Hofmann attorneys also litigate matters involving various aspects of licensing and related agreements. As an example, Zelle Hofmann attorneys represented a Silicon Valley company alleging breach of a licensing agreement and seeking an accounting. This case involved the plaintiff's customized software product used in connection with climate control sensors and devices.

### Representative Matters

Kellogg Co. v. Exxon Mobil Corp (trademark infringement and dilution)

Kendall-Jackson Winery (trademark and trade dress proceedings)

NBA Properties v. ABA, Inc. (trademark infringement)

## **Examples of Trademark Infringement, Trademark Dilution, Trade Dress And Trade Secret Cases**

***Kellogg Company v. Exxon Corp. (W.D.Tenn. and 6th Cir.).*** Zelle Hofmann attorneys represented Kellogg in this trademark infringement and dilution action against Exxon Mobil Corporation. The case involved Kellogg's famous anthropomorphic cartoon tiger, TONY THE TIGER, and the cartoon tiger used by Exxon in the 1960s to promote its motor fuels. In the lawsuit, Kellogg alleged that Exxon abandoned its Cartoon Tiger in the 1980s, reintroduced it in the 1990s in a modified form, and began to use it to directly promote food products, beverage products and convenience store services at its service stations. Kellogg claimed that this recent expansion of use of the Exxon cartoon tiger into the food, beverage and convenience store services areas infringed and diluted Kellogg's TONY THE TIGER mark. In August of 1998, the federal district court in Memphis granted summary judgment in Exxon's favor.

On April 6, 2000, however, the Sixth Circuit Court of Appeals, reversed and remanded the case for trial on Kellogg's trademark infringement claims. *Kellogg Co. v. Exxon Corp.*, 209 F.3d 562 (6th Cir. 2000). In June 2001, the district court additionally upheld Kellogg's claim for dilution by blurring under the Federal Trademark Dilution Act ("FTDA"), concluding that Kellogg had shown proof of "actual dilution" by blurring sufficient to defeat Exxon's motion for summary judgment. *Kellogg Co. v. Exxon Mobil Corp.*, 192 F.Supp.2d 790 (W.D.Tenn. 2001). Key issues raised by the litigation and appeal included laches, acquiescence, abandonment, progressive encroachment and myriad issues under the FTDA.

***NBA Properties, Inc. v. ABA, Inc. et al. (E.D.N.Y.).*** Zelle Hofmann attorneys represented the original founders of the American Basketball Association in a trademark infringement action brought by NBA Properties, Inc. ("NBAP"). This case involved ABA, Inc.'s efforts to launch a new basketball league called "ABA2000," and allegations by NBAP that use of the "ABA" mark infringed NBAP's alleged rights in that mark. Zelle Hofmann attorneys had represented the ABA in the 1970s in antitrust proceedings against NBA. Trademark issues presented by this litigation included, among others, the validity of NBAP's trademark registrations, whether NBAP's alleged use of the ABA marks has been "sham" or mere "token" use designed to reserve rights in the mark, and the scope of protection provided by certain trademark registrations.

***Gardetto's Bakery, Inc. v. Kellogg Company (D. Minn.).*** Zelle Hofmann attorneys represented Kellogg in this action alleging trademark infringement and trademark dilution under the Lanham Act and state unfair competition laws. In this case, the plaintiff claimed that Kellogg's use of the term "SNACK'UMS™" for a cereal-based snack food product infringed and diluted the plaintiff's federally registered "SNAK-ENS®" mark, which the plaintiff used on its snack mix products. The plaintiff

filed its complaint in late-October 1999, filed a motion for a preliminary injunction in November 1999, and sought to enjoin Kellogg's nationwide product launch scheduled for January 2000. Zelle Hofmann attorneys expeditiously assembled and submitted to the court extensive evidence, including survey evidence, supporting Kellogg's opposition to the motion for a preliminary injunction. Oral argument on the motion was held in mid-December 1999, and the court denied the plaintiff's motion from the bench.

***Trademark and trade dress infringement, unfair competition action (N.D.Cal. and 9th Cir.).*** Zelle Hofmann attorneys represented the plaintiff Kendall-Jackson Winery, Ltd. in this case, which involved, among others, claims for trademark and trade dress infringement under the Lanham Act, and state common law claims. This case, which was tried to a jury and involved an appeal to the Ninth Circuit Court of Appeals, pertained to the labeling and packaging of bottled wine products.

***Trade secret misappropriation action (Mich. Cir. Ct., Calhoun Cty. and W.D.Mich.).*** Zelle Hofmann attorneys represented the plaintiff in this case, which brought claims for breach of contract and misappropriation of trade secret information. This action was initially filed in Michigan state court and pertained to the product formulations and manufacturing processes for food products. During discovery, Zelle Hofmann attorneys uncovered evidence of other unlawful conduct on the part of the defendant which enabled the plaintiff to amend its complaint to assert additional claims for unfair competition under the Michigan Consumer Protection Act and the Lanham Act. Shortly after the plaintiff amended its complaint, the matter was removed to federal court and settled favorably.

***Trade secret misappropriation action (M.D.Pa.).*** Zelle Hofmann attorneys represented the plaintiff in this action which brought claims for breach of contract, misappropriation of trade secret information and conversion. The action pertained to the design and engineering of a mechanical device used in the manufacture of food products, as well as the processes associated with the use of that device. Zelle Hofmann attorneys obtained a stipulated final judgment and consent decree, which enjoined the defendant from further use or disclosure of the plaintiff's trade secret information.

***International trademark infringement action (Intermediate People's Court of Meizhou City; on appeal, High People's Court of Guangdong Province, People's Republic of China).*** This action involved infringement of the trademarks and trade dress of KELLOGG'S® CORN FLAKES ready-to-eat cereal in the People's Republic of China ("P.R.C."). Kellogg brought this action against the Meizhou Kongalu Nutritious Food Company in the Intermediate People's Court of Meizhou City, located in the Guangdong Province of the P.R.C. Kellogg alleged claims for violation of P.R.C. Trademark Law, P.R.C. Unfair Competition Law and various international treaties and agreements, including the Paris Convention. Kellogg initially was successful in obtaining a temporary order enjoining Kongalu's sale of the product. The Meizhou Intermediate Court,



however, later ruled against Kellogg. Kellogg appealed to the High People's Court of Guangdong Province.

Zelle Hofmann attorneys, who had no involvement in the lower court proceeding, were extensively involved in the appeal of this matter. Zelle Hofmann attorneys first assisted Kellogg in the search for and retention of new Chinese local counsel; they then worked closely with that counsel in the appellate proceeding. Zelle Hofmann prepared extensive briefs, affidavits and other materials on a number of legal and evidentiary issues. Zelle Hofmann supervised the translation of these materials into Chinese, as well as their review and finalization by local counsel. Kellogg obtained a reversal of the lower court's order and a judgment in its favor.

***Trade dress infringement and unfair competition claims preliminary injunction hearing (D. Utah).*** In this case, Zelle Hofmann attorneys represented the defendant against trade dress infringement and other claims. The plaintiff alleged infringement of a trade dress or product configuration for various plastic food molds under the Lanham Act and related state common law claims. The plaintiff unsuccessfully sought a preliminary injunction against the defendant which would have required a nationwide recall and/or re-labeling of millions of packages of defendant's product. Thereafter, Zelle Hofmann attorneys obtained summary judgment on all of the plaintiff's state common law claims and the case settled.

***Trademark infringement action preliminary injunction hearing (S.D. Ohio).*** Zelle Hofmann attorneys represented the defendant in this case, and successfully defeated a motion for preliminary injunction after a two-day hearing. This case involved a broad range of trademark and other issues, including the related goods doctrine, dilution, confusion of sponsorship and the necessary showing for irreparable injury. This matter settled before trial. Published opinion: *Worthington Foods, Inc. v. Kellogg Company*, 732 F.Supp. 1417 (S.D.Ohio 1990).

***Trade secret misappropriation and trade disparagement action (Circuit Court, Cook County, Ill., N.D. Ill., C.D.Cal.).*** Zelle Hofmann attorneys represented one of the top financial printers in a number of matters involving its competitors. The disputes concerned allegations of stealing trade secrets and employees, as well as trade disparagement and other violations.

***Trade secret misappropriation action (N.D. Cal.).*** Zelle Hofmann attorneys have represented companies in the semiconductor industry, and in the advertising industry, in cases involving the alleged theft of trade secrets by competitors.

## **Examples of False Advertising Matters and Regulatory Matters**

***Unfair advertising action (W.D.Mich.).*** In this case, Zelle Hofmann attorneys represented a defendant in a Lanham Act case involving claims for misleading advertising on product comparisons. Extensive briefing was required in preparation for a court-mandated alternative dispute resolution session. The action settled before trial.

***State regulation of advertising (S.D. Iowa).*** Zelle Hofmann attorneys represented a national advertiser in this action against various state attorneys general in federal court. The action alleged that the A.G.s' threatened or actual enforcement actions against the plaintiff were preempted by federal law, unduly burdened interstate commerce, improperly restricted free speech, constituted discriminatory enforcement and/or violated the interstate compact clause. This case was favorably settled.

***State regulation of food labeling claims (N.D.Tex. and 5th Cir.).*** Zelle Hofmann attorneys represented a company seeking to enjoin preliminary enforcement of the Texas Food, Drug and Cosmetic Act as it applied to commercial speech contained on labels of, and in advertising for, certain food products. While the trial court denied a preliminary injunction, the company's position was later vindicated by the United States Supreme Court in opinions such as *Rubin v. Coors Brewing Co.*, 115 S.Ct. 1585 (1995) and *44 Liquormart, Inc. v. Rhode Island*, 116 S.Ct. 1495 (1996).

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## Labor and Employment Litigation

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- Thomas M. Darden
- Rolf E. Gilbertson
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- Timothy W. Regan
- John C. Steele

Zelle Hofmann attorneys represent employers and employees in a variety of disputes arising in the labor and employment context. The firm's labor and employment practice occurs in federal court and before numerous state and local courts and administrative agencies. The types of cases Zelle Hofmann attorneys have litigated or currently are litigating include wrongful termination, age, sexual, racial and disability discrimination and harassment, violation of both federal and state labor and employment statutes, trade secret protection and unfair competition, and matters involving employee benefit funds.

***View case summaries of labor and employment matters.***

## **Examples of Labor and Employment Cases**

***Wrongful Termination and Disability Discrimination (C.D. Cal.).*** Zelle Hofmann attorneys represent the defendants in a case involving claims for wrongful termination in violation of the Americans with Disabilities Act, Fair Employment and Housing Act, Family and Medical Leave Act and California Family Rights Act. Zelle Hofmann attorneys filed a motion for summary judgment on behalf of its clients, which was recently granted. The court determined that there was no evidence to support claims for wrongful termination, constructive termination and retaliation, and applied the one year statute of limitations to the claims for sexual harassment.

***Sexual harassment, gender discrimination, retaliation, and constructive discharge (Superior Court, Central District, Los Angeles).*** This case involves serious claims of sexual harassment, in particular, hostile work environment, quid pro quo harassment, sexual assault and battery, in addition to claims for gender discrimination, retaliation and constructive discharge. The claim alleges violation of California's Fair Employment and Housing Act. Zelle Hofmann attorneys filed a motion for summary judgment on the issue of whether or not the plaintiff had properly pled a claim for relief under the ADA. The motion was granted and all claims regarding the ADA were dismissed. There remains only a claim for sexual discrimination.

***Gender discrimination and retaliatory discharge (E.D. Mich.).*** In this case, Zelle Hofmann attorneys represented a corporate defendant against claims by an employee for sexual discrimination and retaliatory discharge. Zelle Hofmann attorneys defended both a private action brought by the plaintiff, as well as a separate action brought by the EEOC. This matter was settled favorably to our client.

***Breach of employment contract and wrongful termination in violation of public policy (Cal. Super. Ct., Contra Costa Cty.).*** Zelle Hofmann attorneys represented a corporate defendant in this case, wherein the plaintiff alleged breach of his employment contract and wrongful termination in violation of public policy. On behalf of their client, Zelle Hofmann attorneys obtained summary judgment on the plaintiff's employment contract claim, and summary adjudication on multiple wrongful termination issues.

***Age discrimination litigation (Ariz. Super. Ct., Maricopa Cty. and D. Ariz.).*** In these related state and federal cases, Zelle Hofmann attorneys represented employees asserting claims of age discrimination in employment, which arose out of reductions in force conducted by the defendant.

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## Public Interest Litigation

Zelle Hofmann attorneys have represented individuals and organizations in numerous matters of significant public interest over the years. These matters have included, among others, cases involving public health and safety laws, the rights of disabled persons, human rights violations under U.S. and international law, as well as civil rights.

***View case summaries of public interest matters.***

## **Examples of Public Interest Cases**

***Bottled Water Litigation (Cal. Super. Ct., San Francisco Cty.).*** Zelle Hofmann attorneys represented a consumer suing on behalf of the general public in this consolidated action against a number of bottled water producers. The complaint alleged that the defendants sold to consumers certain bottled water products containing excessive levels of unhealthful contaminants, including arsenic, trihalomethanes and heterotrophic bacteria. The complaint asserted that the sale of those bottled water products was unlawful under California's bottled water quality laws, and that certain bottled water producers were deceptively marketing their products. Zelle Hofmann attorneys, along with their co-counsel, obtained consent judgments against all of the defendants.

***Disability Rights Litigation (C.D. Cal. and Cal. Super Ct., Alameda Cty.).*** Zelle Hofmann attorneys represent people with mobility disabilities in two pending cases. In one action, four wheelchair users allege that two Southern California department stores of a major national chain violate the Americans with Disabilities Act and California disability access laws by failing to provide equal access to the merchandise. The action seeks injunctive relief and damages under California law. Zelle Hofmann also represents a disability rights organization in a private attorney general action against another major department store chain. The complaint, which seeks injunctive relief, alleges that the chain denies people with mobility disabilities equal access to the merchandise in its California stores in violation of California's Unfair Competition Law, Business and Professions Code section 17200 *et. seq.*

***In re Austrian and German Bank Holocaust Litigation (S.D.N.Y.).*** A complex action against a number of German and Austrian banks. This action involved tort and international law claims on behalf of Holocaust survivors and their heirs. The claims alleged, among other things, that the German and Austrian banks were complicit in and profited from the seizure, looting and laundering of assets of persecutees of the Nazi regime during World War II. This and other related cases resulted in the establishment of a \$5 billion fund which is being used to compensate slave laborers and forced laborers during World War II, Holocaust survivors and their heirs, and other victims of Nazi persecution during World War II.

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## **Real Estate Litigation**

Zelle Hofmann attorneys have extensive experience in complex real estate litigation in state and federal courts around the country, involving individual matters and class actions. Based on our research and analysis of decades of case law governing the property rights of individual landowners and corporations nationwide, we have extensive knowledge of substantive property rights and the procedural mechanisms available to enforce those rights. We have worked with a broad network of law firms, experts and consultants nationwide that have substantial experience concerning property rights, real estate valuation and industry procedures and practices. Our litigation experience includes individual suits and class actions related to ownership interests in railroad, pipeline, utility and highway rights of way and the use of such rights of way for the installation of fiber optic cable networks. We also have extensive litigation experience in property insurance coverage matters involving substantive property rights and valuations related to building leases, tenant improvements, rental values, financing and other contractual interests.

### **Representative Matters**

*Fiber Optic Right of Way* - Nationwide class action litigation in which class members alleged trespass by telecommunication company defendants on class members' property via the construction of nationwide fiber optic networks, and sought hundreds of millions of dollars in damages



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- Timothy W. Regan
- Stephen M. Rogers
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- Karl S. Vasiloff
- Richard L. Voelbel
- Brett A. Wallingford
- Lawrence Zelle

## **Reinsurance**

Zelle Hofmann has deep experience in a myriad of subject matters related to reinsurance disputes. Zelle Hofmann attorneys have experience in reinsurance disputes relating to both broker and direct reinsurance markets. The firm has represented ceding companies, reinsurers, retrocessionaires, and reinsurance intermediaries. It has acted on behalf of clients in arbitration, litigation, and in connection with specific claim analysis involving treaty and facultative reinsurance. Zelle Hofmann attorneys have also acted as mediators and arbitrators in reinsurance disputes. Zelle Hofmann attorneys have arbitrated or litigated such issues as:

- Aggregate extension clauses
- Bad faith
- Cutoff
- Declaratory judgment expenses
- Follow the fortunes and settlements
- Fraud and collusion
- Late notice
- Offset
- Right to associate

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## **Securities Litigation**

Zelle Hofmann lawyers have broad experience in litigation matters arising out of the securities laws. We represent clients in matters ranging from class actions brought by private plaintiffs to enforcement actions brought by the Securities and Exchange Commission. We have extensive experience representing issuers, underwriters, accounting firms, financial institutions, securities firms, officers, directors, broker/dealers and outside professionals, including attorneys, accountants, and financial advisors. We regularly represent clients in state and federal court litigation, regulatory and investigative proceedings, and arbitrations throughout the country. Over the years we have achieved significant success for our clients through early dismissals of actions and summary judgments. We have also successfully tried numerous cases and arbitrations. Because our attorneys are skilled trial lawyers and prepare each case with an eye toward presenting the case before a judge or jury, we are often able to obtain favorable resolutions for our clients without actually having to go to trial.

Our clients come from all segments of the securities markets and our attorneys understand not only the law, but our clients' businesses as well. Zelle Hofmann attorneys have substantial experience defending companies and individuals in civil and criminal securities litigation and investigations initiated by the SEC, Department of Justice and the NASD. We frequently defend broker-dealers in securities arbitrations. We have successfully defended clients against claims of unauthorized trading, churning, unsuitability, failure to supervise, breach of fiduciary duty and fraud in cases involving stocks, bonds, options and derivative securities.

Zelle Hofmann also routinely represents clients in shareholder derivative suits and class actions. We are frequently called on to represent clients in disputes arising from the collapse of businesses, disputes growing out of joint ventures, distribution and licensing arrangements, contested acquisitions, and defaults in contractual performance.

Representative clients include: Citicorp Investment Services, HSBC, Merrill Lynch, Morgan Stanley, NFP Securities, Round Hill Securities, Smith Barney, and Wells Fargo.

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- Richard M. Hagstrom
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## Trade Regulation

Zelle Hofmann attorneys have extensive experience in matters before numerous domestic and international regulatory agencies, including the Department of Justice, the Food and Drug Administration, the Federal Trade Commission, the International Trade Commission, the Interstate Commerce Commission, the National Association of Securities Dealers and the Securities Exchange Commission.